

Summary: The Plaintiff filed a motion for a temporary restraining order against a correctional officer at the North Dakota State Penitentiary. The Court denied the motion, finding that the Plaintiff failed to meet his burden under Rule 65 of the Federal Rules of Civil Procedure and that not one of the Dataphase factors weighed in favor of a temporary restraining order.

Case Name: Burke v. ND Department of Correction & Rehabilitation

Case Number: 1-07-cv-04

Docket Number: 39

Date Filed: 4/28/08

Nature of Suit: 550

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Dale Joseph Burke,)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR TEMPORARY
vs.)	RESTRAINING ORDER
)	
North Dakota Department of)	Case No. 1:07-cv-04
Correction and Rehabilitation,)	
)	
Defendant.)	

Before the Court is the Plaintiff's "Motion for Temporary Restraining Order" filed on April 28, 2008. See Docket No. 38. For the reasons set forth below, the motion is denied.

I. BACKGROUND

The plaintiff, Dale Joseph Burke, is an inmate at the North Dakota State Penitentiary (NDSP) who initiated a civil rights action under 42 U.S.C. § 1983 on January 23, 2007. Burke now seeks a temporary restraining order against Barb Bailey, a correctional officer at the North Dakota State Penitentiary. Burke requests that the Court order Officer Bailey to stop harassing and interfering with his legal work, law library rights, and his access to the courts. See Docket No. 38.

According to Burke, Officer Bailey harasses inmates who use the NDSP law library and makes up rules to interfere with inmates who try to perform legal work. Burke contends that Officer Bailey advocates to her superiors to have her “made up” rules put in writing; that she tries to stop inmates from preparing grievances on the law library typewriters; that she has stopped inmates from helping each other with their legal work; and that she has had several inmates banned from the law library. According to Burke, on April 21, 2008, he moved a typewriter from the law library to the research computer station. Burke contends that on April 24, 2008, Officer Bailey stopped Burke at the medication line and told him that if he moved the typewriter again he would receive a write-up, he would be “thrown in the hole,” and he would be permanently banned from the law library.

II. LEGAL DISCUSSION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, in determining whether a temporary restraining order should be issued, the Court must look to the specific facts shown by affidavit(s) to determine whether immediate and irreparable injury, loss, or damage will result to the applicant. In determining whether preliminary injunctive relief should issue, the Court is required to consider the factors set forth in Dataphase Sys., Inc. v. C L Sys. Inc., 640 F.2d 109, 114 (8th Cir. 1981). The Eighth Circuit summarized those factors as follows:

When considering a motion for a preliminary injunction, a district court weighs the movant’s probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties, and the public interest. Dataphase Sys., Inc. v. C L Sys. Inc., 640 F.2d 109, 114 (8th Cir. 1981) (*en banc*).

Pottgen v. Missouri State High Sch. Activities Ass’n, 40 F.3d 926, 928-29 (8th Cir. 1994); Pruco Securities Corp. v. Montgomery, 264 F. Supp. 2d 862, 866 (D.N.D. 2003).

The burden of establishing the necessity of a temporary restraining order or a preliminary injunction is on the movant. Baker Elec. Co-op, Inc. v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994); Modern Computer Sys., Inc. v. Modern Banking Sys., Inc., 871 F.2d 734, 737 (8th Cir. 1989). “No single factor in itself is dispositive; in each case all of the factors must be considered to determine whether on balance they weigh towards granting the injunction.” Baker Elec. Co-op, Inc., 28 F.3d at 1472 (quoting Calvin Klein Cosmetics Corp. v. Lenox Lab., Inc., 815 F.2d 500, 503 (8th Cir. 1987)).

Having carefully considered and weighed the factors enumerated above, the Court finds that Burke has not met his burden and has not established that the imposition of a temporary restraining order is warranted. First, there is nothing in Burke’s submissions to suggest that he has been prejudiced in any irreparable way. Burke contends Officer Bailey threatened to write him up, throw him in the hole, and permanently ban him from the law library if he moved the typewriter again. This is the only example Burke gives of how Officer Bailey’s actions adversely affected him. The threat of irreparable harm absent an injunction does not exist in this case.

Second, because the relief sought by Burke goes directly to the manner in which the penitentiary operates, the request for a temporary restraining order must be viewed with caution and judicial restraint. Prison administrators must “be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” Bell v. Wolfish, 441 U.S. 520, 547 (1979). The operation of the NDSP law library depends on policies and practices that preserve order and

discipline and maintain security. Burke has failed to demonstrate that the relief he seeks outweighs the NDSP's interest in the maintenance of security in the law library and warrants the Court's involvement in what is essentially an administrative function.

Third, the granting of injunctive relief in this case would not serve the public interest. The public has a strong interest in the safe, efficient, and orderly operation of its prison system. See, e.g., Meachum v. Fano, 427 U.S. 215, 229 (1976). This interest would not be served if this Court were to give little deference to penitentiary officials and micro-manage every picayune dispute that arises within the institution.

Fourth, having reviewed Burke's claims, the Court concludes that he has not demonstrated a likelihood of success on the merits as the allegations are vague and conclusory.

III. CONCLUSION

Having carefully considered the Plaintiff's Motion for Temporary Restraining Order, the Court finds that Burke has failed to meet his burden under Rule 65 of the Federal Rules of Civil Procedure. Not one of the Dataphase factors weighs in favor of granting injunctive relief in this case. For the reasons set forth above, Burke's Motion for Temporary Restraining Order (Docket No. 38) is **DENIED**.

IT IS SO ORDERED.

Dated this 29th day of April, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court